

**The Equal Employment Opportunity
Alternative Dispute Resolution Program Could
Be Improved**

March 2003

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DEPARTMENT OF THE TREASURY
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INSPECTOR GENERAL
for TAX
ADMINISTRATION

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MEMORANDUM FOR CHIEF, EQUAL EMPLOYMENT OPPORTUNITY AND
DIVERSITY
CHIEF, AGENCY-WIDE SHARED SERVICES

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FROM: Gordon C. Milbourn III
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Equal Employment Opportunity
Alternative Dispute Resolution Program Could Be Improved
(Audit # 200210014)

This report presents the results of our review of the Equal Employment Opportunity (EEO) Alternative Dispute Resolution Program (ADR). The overall objective of this review was to evaluate the introduction and use of ADR as part of the EEO informal complaint process.

In summary, the Internal Revenue Service (IRS) initiated its ADR Program for EEO informal complaints in 2001, in response to Equal Employment Opportunity Commission guidance. IRS EEO counselors provide employees who have informal complaints with information on the EEO process, including both the traditional informal complaint process and the ADR alternative. The Department of the Treasury recently emphasized the importance of ADR by setting a goal for Departmental Bureaus to use ADR techniques for at least 25 percent of EEO complaints and grievances by the end of Fiscal Year (FY) 2003 and by setting a related goal for a decrease in the number of formal complaints.

IRS employees who used ADR in FY 2002 filed formal complaints less frequently than employees who used the traditional informal complaint method. However, the IRS was not able to fully realize the benefits associated with ADR because only 10 percent of employees with informal complaints used ADR in FY 2002. This occurred because the IRS had concentrated its efforts on informing employees of the new Program rather than on ensuring EEO counselors were prepared to promote the Program, and because

managers were not effectively informed of the benefits of ADR to the IRS and their duty to participate in it.

Although the IRS has had plans for a comprehensive automated system to capture informal complaint data since 2000, EEO management has experienced repeated delays in implementing the automated system. Not having an automated system has adversely affected the EEO Program. The IRS has used additional resources to concurrently develop an interim system to capture key information. Also, EEO staff continue to use paper files and forms, when access to a fully automated system could greatly facilitate case management and timely management reporting.

We recommended that the Chief, EEO and Diversity, and the Chief, Agency-Wide Shared Services (AWSS), take additional measures to promote ADR to employees and managers and to determine reasons why employees elect not to use ADR. The Chief, AWSS, can improve employee participation by ensuring that EEO counselors have training and information on ADR, including success stories and statistics, to market the merits of the Program. The Chief, EEO and Diversity, can improve managerial participation by publicizing top-level management support for ADR, requiring a second level of approval when managers decline to participate in ADR, and better informing managers of the benefits to the IRS.

We also recommended that the Chief, EEO and Diversity, conduct a review to determine whether the planned automated system is the best solution to meet IRS EEO Program needs, and ensure that the IRS follows project management control principles if it continues with implementation of the automated system.

Management's Response: The Chief, EEO and Diversity, and the Chief, AWSS, agreed with six of the seven recommendations presented in the report. The Chief, AWSS, indicated that they are enhancing ADR training for EEO counselors and revising a survey form to find out why employees are not using ADR. The Chief, EEO and Diversity, agreed to communicate the IRS Commissioner's support for ADR. Based on feedback from users, the Chief, EEO and Diversity, decided to use the workforce analysis portion of an automated system but not the complaint tracking portion. The Chief, EEO and Diversity, also indicated project management control principles would be used for any future system procurement.

The Chief, EEO and Diversity, did not agree with our recommendation that managers declining to participate in ADR have their reasons for doing so approved by higher-level management. The Chief, EEO and Diversity, believed that this would compromise the voluntary nature of ADR, the management participation rate was already very good, and instead they should concentrate on increasing the election rate of complainants. However, the Chief, EEO and Diversity, did indicate that they are capturing reasons why management is declining to participate in ADR, and the results appear in an ADR report.

Management's complete response to the draft report is included as Appendix V.

Office of Audit Comment: We continue to believe that requiring higher-level management review of why the use of ADR has been declined by a manager will

emphasize managers' duty to participate and support Department of the Treasury goals for ADR use and decreased formal complaints. However, we do not intend to elevate our disagreement concerning this recommendation to the Department of the Treasury for resolution.

Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Table of Contents

Background	Page 1
Formal Equal Employment Opportunity Complaints Could Be Reduced Through Greater Participation in the Alternative Dispute Resolution Program.....	Page 4
<u>Recommendations 1 and 2:</u>	Page 10
<u>Recommendations 3 through 5:</u>	Page 11
Equal Employment Opportunity Management Should Evaluate the Informal Complaint Automated System	Page 12
<u>Recommendations 6 and 7:</u>	Page 14
Appendix I – Detailed Objective, Scope, and Methodology	Page 15
Appendix II – Major Contributors to This Report.....	Page 17
Appendix III – Report Distribution List	Page 18
Appendix IV – Federal Government Agencies with Noteworthy Alternative Dispute Resolution Programs	Page 19
Appendix V – Management’s Response to the Draft Report	Page 21

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Background

Equal Employment Opportunity Commission (EEOC) regulations require that, prior to filing a formal Equal Employment Opportunity (EEO) complaint, employees must first go through the agency's informal complaint process, which may not exceed 90 days. When an employee¹ contacts an Internal Revenue Service (IRS) EEO office to discuss a concern, EEO counselors provide information at an initial interview on both the traditional informal complaint process and the optional Alternative Dispute Resolution (ADR) process. The IRS' ADR Program, initiated in April 2001, allows employees to use mediation to resolve EEO disputes. Employees who choose ADR retain their right to later file a formal EEO complaint.

If an employee chooses the traditional process, the EEO counselor conducts a limited inquiry into the claims made by the employee, including interviews with the employee and other agency personnel, as well as a review of agency documents if needed. Subsequent to the inquiry, the EEO counselor attempts to resolve the claims by joint or separate consultation with the parties, with the goal of resolving the dispute at the lowest level possible. If attempts to resolve the dispute fail, the EEO counselor provides the employee with a Notice of Right to File a Formal Discrimination Complaint (Form TDF 62-03.11).

The ADR process differs somewhat from the traditional informal complaint process. If, after the initial consultation with the EEO counselor, an employee elects to request ADR, the EEO office then determines whether the case meets participation criteria.² If criteria are met, an EEO territory manager contacts the employee's manager to obtain management's agreement to participate in the ADR process.

¹ Although most EEO informal complaints come from employees, a small number also come from non-employees, e.g., those who applied for employment and were not hired.

² Some types of cases are excluded from participation in the ADR Program. For example, individual complaints in which there are union contract or Merit Systems Protection Board issues, or individual complaints alleging criminal activity or sexual harassment, will be not be considered for the ADR process. In Fiscal Year (FY) 2002, about 5 percent of cases in which IRS employees requested ADR were in the excluded categories.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

After management has agreed to participate, the EEO office notifies a mediator who schedules one or more mediation sessions with the parties involved in the claim. ADR is concluded when the employee and management reach a resolution agreement, the employee withdraws the complaint, or the employee and management are unable to settle the complaint. If the parties are unable to resolve the dispute, the mediator refers the informal complaint back to the EEO office so the EEO counselor can issue the employee a Form TDF 62-03.11.

EEOC regulations require agencies to establish or make available ADR Programs.³ The EEOC hopes to stem the flow of new formal EEO cases through its requirement that agencies make ADR approaches available to employees during both the informal and formal complaint processes. The EEOC reported a backlog of formal complaint cases that led to an average processing time of 464 days in FY 2001.

The IRS' ADR Program offers employees the use of a mediator to resolve EEO disputes. In mediation, a neutral third party with no decision-making authority assists the parties in a dispute to come to a voluntary resolution. Mediation is a frequently used form of ADR.

According to the EEOC, agencies and complainants realize many benefits from using ADR, including: early, informal resolution of disputes in a mutually satisfactory fashion; lower costs and improved resource use compared to traditional administrative or adjudicative processes; and enhanced employee morale. Early resolution of disputes through ADR can make more agency resources available for mission-related programs. The agency can avoid costs such as those for court and expert witnesses. Employee morale can be enhanced when agency management is viewed as open-minded and cooperative.

The Department of the Treasury emphasized the importance of ADR in the Treasury Human Capital Strategic Plan issued in November 2002. In this Plan, designed to address

³ EEOC Regulations, 29 C.F.R. § 1614.102 (b)(2) (July 1999).

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Department and Bureau progress in implementing the President's Management Agenda, the Department of the Treasury set a goal for Bureaus to use ADR techniques for at least 25 percent of EEO complaints and grievances. It set another goal to achieve a 10 percent decrease in formal EEO complaints by the end of FY 2003, with an additional 10 percent decrease by the end of FY 2004.

To achieve Department of the Treasury goals and fully realize potential benefits, ADR must be frequently used and produce effective results, i.e., lead to resolution of complaints. Information provided to employees at the counseling stage largely determines whether they will use the ADR process.⁴ The EEOC's Management Directive for ADR (MD-110) states that in order to encourage the successful operation of ADR throughout each agency, managers and supervisors should receive training with emphasis on the Federal Government's interest in encouraging mutual resolution of disputes and the benefits associated with using ADR.

The IRS administers the EEO Program through three administrative arms: National Headquarters, responsible for policy matters; Agency-Wide Shared Services (AWSS), responsible for EEO Program administration; and the IRS' business units, responsible for promoting EEO and diversity within the unit.

In FY 2002, the IRS reported a total of 1,524 cases closed in the EEO informal complaint process. During that same period, 160 cases (10 percent) were reported as closed using the ADR Program.

We compared the IRS' actions to promote ADR to actions taken by Federal Government agencies with model ADR Programs. To benchmark characteristics of successful ADR Programs, we contacted four Federal Government agencies with agency-wide ADR Programs that had received the Office of Personnel Management Director's Award for

⁴ EEOC Management Directive 110, Federal Sector Complaint Processing Manual, Chapter 3, 3-6, dated November 1999.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Outstanding ADR Programs.⁵ We also consulted two Federal Government agencies that had received awards for localized ADR Programs. All of the agencies we contacted generously agreed to meet with Treasury Inspector General for Tax Administration auditors and provide Program information. See Appendix IV for a brief description of noteworthy Program characteristics.

This review was performed at the IRS National Headquarters in the Offices of the Chief, EEO and Diversity, and the Chief, AWSS, during the period January through November 2002. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

Formal Equal Employment Opportunity Complaints Could Be Reduced Through Greater Participation in the Alternative Dispute Resolution Program

Increasing ADR participation could help the IRS meet the Department of the Treasury goal to decrease formal complaints. In FY 2002, according to information from the IRS, employees who went through ADR were more likely to resolve disputes without filing a formal complaint than those who went through the traditional informal complaint process. However, the percentage of IRS employees who used the ADR process was lower than the Department of the Treasury goal of 25 percent for FY 2003 and was also lower than the Federal Government average, limiting the IRS' ability to realize Program benefits.

In FY 2002, 10 percent of closed IRS informal complaints went through the ADR process. One encouraging trend, however, is that use of ADR at the IRS has been growing during the first 18 months of the Program - from 3 percent of those counseled in the first 6 months, to 10 percent in the second 6-month period, and finally to 11 percent in the most recent 6-month period. However, the IRS' ADR usage still lags behind the Federal Government as a whole, which

⁵ The award recognizes Federal Government organizations that provide innovative and effective ADR Programs, encourage the establishment and improvement of highly effective ADR Programs, and publicize exemplary ADR Programs so they may serve as models.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

averaged 32 percent of individuals with informal EEO complaints using ADR in FY 2001.⁶

Demonstrating a significant benefit from the use of ADR, the IRS provided information indicating that, when IRS managers and employees participated in the ADR process rather than the traditional informal complaint process, more disputes were resolved without employees later filing formal EEO complaints. During FY 2002, IRS employees and managers that participated in the ADR process resolved 68 percent of disputes without filing a formal EEO complaint. In contrast, EEO counselors using the traditional informal complaint process during FY 2002 resolved only 47 percent of disputes without filing formal EEO complaints. Although not yet widely used at the IRS, ADR appears to be contributing to fewer cases proceeding to the formal stage.

While there is limited cost effectiveness information on the ADR process, available data indicate that the ADR process is far less costly than the formal complaint process. The Air Force, one of our benchmark agencies, conducted an internal study on 1996 and 1997 costs. The study showed that while the cost of ADR was slightly higher than that of the regular process for informal EEO complaints (\$1,973 with ADR compared to \$1,512 without ADR), the average cost of formal EEO complaints was significantly higher (ranging from \$8,573 to \$16,372, if appealed). In addition, the benchmark agencies we surveyed reported other benefits from ADR, although not necessarily quantified, such as decreased EEO complaint processing time, reduction in formal complaint filings, cost savings due to reduced processing time, improved communication and relationships between employees and management, and improved workplace morale and productivity.

One benefit measured by the IRS was customer satisfaction with the ADR process. Employees who used ADR reported a 3.8 satisfaction level with the overall handling of their

⁶ *Annual Report on the Federal Workforce Fiscal Year 2001* (EEOC). This was the most recent year for which Federal Government-wide results were available at the time of our audit.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

cases on a scale of 1 to 5, with 5 being strongly satisfied. This is comparable to a 3.7 satisfaction level during FY 2002 for the traditional informal complaint process and suggests, at a minimum, that employee satisfaction levels did not decline under ADR.

We found there were additional marketing actions the IRS could take that could enhance participation in the Program. The IRS had informed employees and managers about the availability of the ADR Program for resolving complaints. However, the IRS could ensure that EEO counselors have the information necessary to market the Program, and that the managers are informed of the benefits of ADR to the IRS and their duty to participate in it.

The IRS provided employees general information on the ADR Program

Since the ADR Program began in April 2001, the IRS has taken steps to assure that all IRS employees were provided with general information on the ADR Program. The Chief, EEO and Diversity, sent an all-employee voice mail message concerning ADR in March 2001, and an IRS newsletter including an ADR article was e-mailed to all employees with e-mail accounts in April 2001. In addition, some EEO territory managers told us that they e-mailed the ADR brochure and a frequently asked question sheet to IRS employees within their territories.

Some EEO territory managers told us that they included articles on ADR in local newsletters, posted ADR information on bulletin boards, or displayed ADR information on television screens in lunchrooms. EEO territory managers told us information on the ADR Program was always included when giving EEO presentations for new employees and at presentations to prevent sexual harassment. Additionally, EEO counselors told us that, as required by the EEOC's MD-110, they inform employees who enter the EEO process about ADR. Similarly, EEO territory managers stated they inform managers about the ADR Program if an employee has requested ADR. However, the MD-110 and benchmark agencies state that more successful ADR Programs will go beyond just making employees and managers aware of the Program.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

EEO counselors need more information to better promote ADR Program benefits

EEO counselors and EEO territory managers reported various barriers to promoting the ADR Program in a positive light and encouraging its use. The EEO counselors stated they present information about the ADR process to employees. However, 25 of 54 EEO counselors we interviewed reported barriers to effective Program promotion. The most frequent comment was that they did not have in-depth knowledge of the ADR Program and were unable to answer all the employees' questions (13 comments). Both EEO territory managers and EEO counselors told us more statistical evidence, including resolution rates, time efficiencies, and cost savings, could improve marketing efforts by showing that ADR works (28 comments).

In December 2002 and January 2003, AWSS EEO staff attempted to survey IRS employees who had made informal EEO complaints and did not choose to participate in ADR to better determine reasons why employees elect not to use ADR. However, because few responses were received from employees, the survey was inconclusive.

EEO management did not provide EEO counselors with instruction and in-depth information to promote the new ADR Program. Instead, EEO management had first focused on informing IRS employees, ensuring EEO counselors followed proper procedures during employee contacts, and training mediators. While an emphasis on procedures is understandable for a start-up ADR Program, MD-110 states that information provided to employees at the counseling stage largely determines whether they will use the ADR process. It states that individuals need information about all aspects of ADR in order to make an informed choice between ADR and the traditional informal complaint process. Most benchmark agencies reported extensive training efforts for EEO professionals. They also reported that demonstrable results and publication of success stories are keys to an ADR Program's growth. They stated that when informed of its successes, stakeholders will support and market the ADR Program.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

As of November 2002, IRS EEO management had not systematically distributed statistical information on resolution rates, time efficiencies, or cost savings to EEO counselors for their use in promoting ADR. EEO management told us they provided EEO counselors a nationwide conference call in June 2002 where ADR issues were discussed for 1 hour. About 57 percent of full-time EEO counselors and 24 percent of collateral duty EEO counselors (31 percent overall) were training to be part of the IRS mediator cadre and therefore received additional courses in mediation. Requests for in-depth training on ADR generally came from the EEO counselors who were not receiving the additional mediation training.

Managers should be trained on their duty to participate in ADR and on benefits from the ADR Program

MD-110 states that managers must be aware that they have a “duty” to cooperate in an ADR process once the agency has determined that a matter is appropriate for ADR. The IRS has told managers that their participation in ADR is voluntary, and in FY 2002, 26 percent of complaints were denied the ADR process because managers declined to participate when requested. We believe that the EEOC guidance anticipates a greater compulsion for management to participate than on a totally voluntary basis.

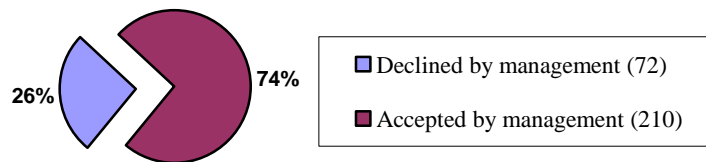
Over one-half of the EEO territory managers we interviewed stated managers had not sufficiently bought in to the ADR Program. Although managers were informed how employees could benefit from the ADR process, they received little information on how ADR could benefit the IRS. We did find that some EEO territory managers had given manager presentations on an ad hoc basis outlining the potential of ADR to save the IRS time and money and to avoid unnecessary litigation. However, not all managers were provided this information, and the presenters did not have any statistical data or success stories available to market the Program.

Although the majority of managers agreed to participate in the ADR process, 26 percent of complaints were denied the ADR process because managers declined to participate (see chart). Of 64 comments recorded in the EEO counselor case

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

files for the cases where management declined to participate, 32 comments (50 percent) indicated that the manager saw no benefit in any further communications with the employee or thought that the ADR Program would not be productive.

IRS Management Response to Requests for ADR FY 2002



Source: FY02 Alternative Dispute Resolution Analysis (IRS AWSS Report, dated October 31, 2002) page 7.

These conditions occurred because EEO management had focused on informing IRS employees rather than on briefing managers of specific ADR Program benefits to the agency. The IRS told managers their participation was voluntary. The IRS had not marketed the ADR Program benefits to all managers by providing training and including demonstrable results and success stories to promote the ADR Program. Nor had top-level management at the IRS further endorsed the support of ADR Programs expressed by Department of the Treasury officials, including the Secretary of the Treasury and the Director, Office of Equal Opportunity Program.

Also, the IRS had not established a policy or trained managers on their duty to participate in the ADR Program, or developed guidance to require managers to document specific reasons for declining to participate in ADR. While we did not evaluate the appropriateness of management choices on whether to participate in ADR, managers may decline to participate in ADR for any reason. They are not required to document the reasons for their decision or have this decision approved by higher-level management.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

MD-110 states that managers and supervisors should receive training with emphasis on the Federal Government's interest in encouraging mutual resolution of disputes and the benefits associated with using ADR. Early resolution of disputes can make greater agency resources available for mission-related programs and avoid court and expert witness costs. Some benchmark agencies also reported that training supervisors, managers, and others was critical to the success of their ADR Programs. They indicated that demonstrable results and publication of success stories increased stakeholder support. Also, while not required by MD-110, some benchmark agencies had policies that limited the ability of management to decline to participate in ADR.

Recommendations

The Chief, AWSS, should:

1. Develop EEO counselor training and annual reports on ADR-specific information, including success stories and statistics to help market the merits of the Program and provide periodic data on the Program benefits.

Management's Response: The AWSS EEO Office will enhance the amount of ADR-specific training provided to EEO counselors. In addition, the AWSS EEO Office will continue enhancing reports to include ADR success stories and data.

2. Revise the pre-complaint customer satisfaction survey form to obtain the reason why employees elect not to use ADR, so that this information can be used to overcome resistance to the Program in the future.

Management's Response: The AWSS EEO Office will revise the pre-complaint customer satisfaction survey form to obtain the reasons why employees elect not to use ADR. To assure the AWSS EEO Office is capturing additional customer feedback, EEO counselors have been instructed to document the reasons customers give for declining the use of ADR. This information is reported in the ADR Analysis Report.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

The Chief, EEO and Diversity, should:

3. Draft a memorandum and voice mail that set forth the Commissioner's support for ADR, for distribution by the Commissioner.

Management's Response: The Chief, EEO and Diversity, will draft a memorandum and voice mail that set forth the Commissioner's support for ADR and distribute them to all IRS employees and managers.

4. Assure IRS policy is changed so that managers who decline to participate in the ADR Program are required to document their reasons for doing so and have such declinations approved by a higher-level manager.

Management's Response: The Chief, EEO and Diversity, did not agree with this recommendation citing, among other factors, the need for voluntary use of ADR should not be compromised, the management participation rate is very good, and they should concentrate on increasing the election rate of complainants.

Office of Audit Comment: Because MD-110 guidelines state that ADR participation is a "duty," we continue to believe that more encouragement for managers to participate is necessary. Requiring higher-level management review of why the use of ADR has been declined by a manager could increase participation and help achieve Department of the Treasury goals for ADR usage and decreased formal EEO complaints.

5. Coordinate with the Director, Strategic Human Resources, and the Director, EEO and Diversity Field Services, to ensure that all managers receive training on ADR, including success stories and statistics describing benefits to the IRS.

Management's Response: The Chief, EEO and Diversity, is working with the Strategic Human Resources Office to revise management aspects of EEO training for all managers to include a module on ADR that contains success stories and statistics describing benefits.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Equal Employment Opportunity Management Should Evaluate the Informal Complaint Automated System

According to AWSS EEO management, not having an automated system to capture EEO information has adversely affected the EEO Program. The AWSS EEO Office has had to use its resources to develop interim systems, even while the Headquarters EEO Office has been using its resources to develop a more comprehensive automated system. Also, EEO counselors have had to continue relying on paper files and forms, when access to an automated system could greatly facilitate case management. AWSS EEO management also told us that not having an automated system has meant that management does not have access to comprehensive, timely information on the EEO Program.

The AWSS EEO Office has stressed the importance of an automated system for reporting, as well as Program and case management, in its FY 2001-2002 and FY 2002-2003 Program Plans for EEO and Diversity Field Services. Specifically, the FY 2001-2002 Program Plan stated that:

“The implementation of a fully integrated case inventory and information system, linking all EEO & Diversity field offices and allowing customer access (to appropriately authorized individuals), will provide several benefits currently not available. They include:

- *Immediate data roll-ups (currently performed manually).*
- *Immediate data compilations (currently performed manually).*
- *Consistent and common data results (will facilitate process evaluation).*
- *Immediate information to the customer.*
- *Improve [sic] response time to inquiries (Congress, EEOC, etc.).”*

Headquarters EEO management has experienced repeated delays in implementing an automated system to capture EEO information. In September 2000, Headquarters EEO management procured software to automate the report process and provide informal complaint and workplace

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

analysis reports. However, Headquarters EEO management has expected some delays in customizing the software program for the IRS. The Headquarters EEO analyst also reported some delays were due to the AWSS EEO Office's ongoing submission of system change requests and the vendor making software modifications. The system change requests related to modifications that allowed AWSS EEO management to better track informal complaints and ADR information. Headquarters EEO management had expected the automated system to be available at several different points during 2001 and 2002, but as of January 2003, the system was still not operational.

Delays could have been reduced if Headquarters EEO management had used a project management control approach. For project management control, milestones are commonly used to represent significant scheduling points, such as the start or completion of a portion of the work, along with due dates and who is responsible. Headquarters EEO management had not set target dates for AWSS EEO system change requests or for vendor software modifications.

Although the automated system continued to be delayed, Headquarters EEO management postponed reassessing whether more efficient and economical methods could be used to capture and deliver accurate information to report EEO statistical information to the Department of the Treasury. At a meeting in November 2002, Headquarters EEO management told us that a reassessment was in process. In January 2003, Headquarters EEO management stated that no final decisions had been made on the automated system. The IRS has continued to rely on its manual reporting system. Not wanting to wait any longer for the implementation of the Headquarters EEO automated system, AWSS EEO management committed additional IRS resources to develop an interim automated system that was implemented in May 2002 to track informal EEO complaints. During December 2002, the AWSS EEO Program Manager assigned to implement the interim system continued to add new components to expand it.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Recommendations

The Chief, EEO and Diversity, should:

6. Conduct a review that involves principal users, to determine whether the automated system is the most effective, economical, and well-coordinated solution to meet IRS EEO Program needs for the Headquarters EEO Office, AWSS EEO Office, and IRS business units, while minimizing ongoing costs.

Management's Response: Based on feedback from the user group and the AWSS EEO Office, the Chief, EEO and Diversity, decided to use the workforce analysis portion of the automated system but not the complaint tracking portion. The AWSS EEO Office developed its own complaint tracking system.

7. Ensure that the IRS follows project management control principles consistently,⁷ if the IRS determines from its review that it should continue with implementing the automated system.

Management's Response: The Chief, EEO and Diversity, will follow project management control principles for any future automated system procurement.

⁷ *Project Management Guide, Version 2.1*, IRS Document 7357 (Rev. 12-93), Catalog Number 10284K.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to evaluate the introduction and use of Alternative Dispute Resolution (ADR) as part of the Equal Employment Opportunity (EEO) informal complaint process. To accomplish this, we performed the following tests:

- I. To determine if affected employees and managers were informed about the ADR Program, we:
 - A. Interviewed Internal Revenue Service (IRS) EEO area and territory managers and EEO counselors concerning their procedures, activities, and documents to inform those affected by the ADR Program. We spoke with all 7 area managers, 22 of 40 territory managers, and 39 of approximately 61 full-time EEO counselors, as well as 15 of approximately 210 collateral duty EEO counselors. We chose samples on a judgmental basis because we did not plan to project results. We provided for geographic dispersion in sample selection.
 - B. Reviewed the ADR brochure, and other material and information available to potential complainants, for accuracy, accessibility, and usefulness, applying EEO Commission guidance as criteria.
 - C. Obtained data on EEO and ADR Program participation.
- II. To determine if the IRS is capturing the information it needs to report on ADR in its current manual system and in the new automated system, we interviewed National Headquarters and Agency-Wide Shared Services ADR managers on the status of implementing the automated system and processes used during the interim period to report internally and externally.
- III. To determine if the IRS could do more to promote the use of ADR, we:
 - A. Interviewed IRS management to identify what the IRS did to implement the ADR Program.
 - B. Identified what other Federal Government agencies have done to establish policies, procedures, and implementation activities for ADR; obtained written policies and procedures; and determined the agencies' results.
 - C. Interviewed officials knowledgeable about ADR in six Federal Government agencies to obtain information on how they implemented their ADR Programs, particularly with respect to providing a useful and efficient Program, increasing use of the Program, providing oversight of the Program, and obtaining stakeholder buy-in. We selected the six Federal Government agencies because they received the Office of

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Personnel Management Director's Award for Outstanding ADR Programs in 1999, 2000, or 2001, and they received the award for an ADR Program involving workplace disputes.

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**The Equal Employment Opportunity Alternative Dispute Resolution Program
Could Be Improved**

Appendix III

Report Distribution List

Acting Commissioner N:C
Deputy Chief, Equal Employment Opportunity and Diversity N:EEO
Director, Equal Employment Opportunity and Diversity Field Services A:EEO
Director, Strategic Human Resources N:ADC:H
Chief Counsel CC
National Taxpayer Advocate TA
Director, Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
Office of Management Controls N:CFO:AR:M
Audit Liaisons:
 Chief, Agency-Wide Shared Services A
 Director, Strategic Human Resources N:ADC:H

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Appendix IV

Federal Government Agencies with Noteworthy Alternative Dispute Resolution Programs

As part of our audit work, we reviewed the lists of winners of the Office of Personnel Management's (OPM) 1999, 2000, and 2001 Director's Award for Outstanding Alternative Dispute Resolution (ADR) Programs. The award is given each year to Federal Government agencies with noteworthy ADR Programs. The following information is excerpted from narratives describing why the ADR Programs of these Federal Government agencies were recognized.

We obtained ADR usage information from three of the benchmark agencies we surveyed that had agency-wide ADR Programs. ADR usage was 28 percent of informal complaints at the Air Force, 17 percent at the Bureau of Engraving and Printing, and 7 percent at the Defense Logistics Agency in Fiscal Year (FY) 2002. The Post Office had not yet compiled figures for FY 2002 at the time of our audit, but in FY 2001, 69 percent of informal complaints were processed through its ADR Program.

During April 2002, we interviewed officials from the selected agencies so we could compile a schedule of their best practices. We used the best practices and results from these successful ADR Programs as benchmarks for the newly introduced Internal Revenue Service ADR Program.

Bureau of Engraving and Printing - *Alternative Dispute Resolution Program*

Department of the Treasury

Winner of OPM Director's Award, 1999 - "...developed as a partnership initiative by the Bureau of Engraving and Printing Joint Labor Management Partnership Council (Bureau executive staff and heads of 16 unions) to provide an informal means for labor and management to resolve disputes at the lowest level within the agency, restore productivity to areas impacted by conflict, and improve working relationships among the affected parties."

Defense Logistics Agency (DLA) - *RESOLVE Program, "Reach Equitable SOLutions Voluntarily and Easily"*

Department of Defense

Winner of OPM Director's Award, 2000 - "DLA has a comprehensive and aggressive marketing strategy to publicize and maintain continuous visibility of the RESOLVE program. It maintains a website, provides training, and has developed a brochure, video, and guidebook. Materials, forms, and training modules are among the products that are available on their website."

Department of Energy (Headquarters) - *Department of Energy Headquarters Mediation Program*

Winner of OPM Director's Award, 2001 - "Its very strong use of coaching and guiding disputants before and through the mediation process is particularly noteworthy...in Fiscal Year 2000, 64% of the cases referred were settled through mediation. There was an approximate savings per case of \$30,000 to \$50,000 with 'immeasurable savings' associated with an improvement in morale, work environment, trust, and communication."

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

Federal Aviation Administration (Northwest Mountain Region) - *Northwest Alternative Dispute Resolution Program*

Department of Transportation

Winner of OPM Director's Award, 2001 - "...strong emphasis on a proactive approach to addressing conflict and conflict resolution, and its creative use of training methods to help people know when and how to use ADR are also noteworthy...The agency's strategic plan has goals for training managers, supervisors, and non-supervisory employees in mediation awareness. Training materials including videos are available and have been used by others outside the agency."

United States Air Force - *Air Force Alternative Dispute Resolution Program*

Department of Defense

Winner of OPM Director's Award, 1999, 2001 - "...recognized as an outstanding agency-wide ADR program...the Secretary of the Air Force issued an agency-wide memorandum on ADR...the agency has developed an extensive ADR training program on topics including ADR program design, ADR awareness, interest-based bargaining, basic mediation skills, mediation mentoring, mediation refreshers, advanced mediation skills, negotiation/ADR skills for attorneys, and mediation and confidentiality videos. Progress of the program is measured by tracking the amount of ADR use, tracking overall resolution rates, and assessing the reduction in time required to process disputes."

United States Postal Service - *REDRESS Program, "Resolve Employment Disputes, Reach Equitable Solutions Swiftly"*

Winner of OPM Director's Award, 1999, 2000 - "The Postal Service's ADR program, REDRESS...is offered to almost all employees who seek EEO pre-complaint counseling - 70% elect to use it...State of the art evaluation by an outside evaluator has ensured the integrity of data...Since the national roll out of the program in 1998, there has been a downturn in formal EEO complaints, with a 21% drop in formal complaints recorded in the first three quarters of FY 2000...marketing efforts are state of the art. At the national level, REDRESS has developed a brochure, two posters, three videos, a sophisticated press kit, and a monthly newsletter that is distributed nationally."

Sources for Appendix IV information: Employee Relations Division, OPM; OPM website at www.opm.gov; and other individual Federal Government agencies.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

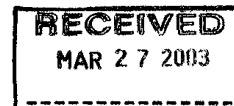
Appendix V

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 27 2003



MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: John M. Robinson *John M. Robinson*
Chief, EEO and Diversity

SUBJECT: Draft Audit Report – The Equal Employment Opportunity
Alternative Dispute Resolution Program Could Be Improved
(Audit No. 200210014)

I am pleased the objective of the subject audit was to "evaluate the introduction and use" of Alternative Dispute Resolution (ADR) in the EEO pre-complaint process. In January of 2002, when the audit began, our ADR program was approximately nine months old. Having the program reviewed at such an early stage gives us the opportunity to assess our progress and identify areas needing improvement.

We agree with most of your recommendations and have already taken steps to implement corrective actions. For example, we are currently drafting an ADR policy memorandum for the Acting Commissioner's signature. In addition, we are working with Strategic Human Resources to revise EEO training for managers to include a lesson on ADR. We do not agree that IRS should require managers, who decline to participate in the ADR Program, to document their reasons for doing so and have that reason approved by a higher-level manager. Increasing the ADR participation rate of managers is a goal we share with you. However, we want to first focus more attention on marketing the benefits of ADR to see if that yields the desired voluntary participation.

The IRS has long believed in the benefits derived from use of ADR. In fact, in 1994 the Acting Assistant to the Commissioner (EO) convened a working group to develop an ADR process for resolving EEO pre-complaints. The group consisted of members representing service centers, districts, complaint centers, headquarters operations, and the National Treasury Employees Union (NTEU). The group developed draft procedures, forms and reports and submitted their proposal to the NTEU for review. Unfortunately, the group could not agree on implementing the new process.

In 1998 the Chief, EEO again initiated discussions with the NTEU in anticipation of the Equal Employment Opportunity Commission's (EEOC) requirement that all Federal agencies use dispute resolution. The EEOC's revised regulations [29 C.F.R. Section 1614.102(b)(2)] requiring agencies to establish or make available a dispute resolution program, was issued in July 1999. Following months of intense discussion, the IRS and the NTEU signed a Letter of Understanding (LOU), on November 1, 2000, to implement

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

2

ADR in the EEO pre-complaint process beginning Spring 2001. We selected mediation as our main ADR method.

As your report accurately points out, ADR can be a very beneficial tool. For example, mediation saves time – FY 2003 first quarter data showed the average time spent in mediation to resolve a complaint was only 4 hours 41 minutes. Four hours is time well spent when you contrast that with the months and sometimes years it can take to close a complaint through the traditional EEO complaint process.

The Chief, EEOD and, where applicable, the Director, EEOD Field Services (AWSS) will implement the following corrective actions in response to your recommendations.

IDENTITY OF RECOMMENDATIONS/FINDINGS:

The Chief, AWSS, should:

1. Develop EEO counselor training and annual reports on ADR-specific information, including success stories and statistics to help market the merits of the Program, and provide periodic data on the Program benefits.
2. Revise the pre-complaint customer satisfaction survey form to obtain the reason why employees elect not to use ADR, so that this information can be used to overcome resistance to the Program in the future.

ASSESSMENT OF CAUSE:

Our ADR program is relatively new and AWSS continues to identify areas in need of improvement. EEO counselors have been provided with ADR training and prior to this report, there was no indication that their training lacked specific enough information. At the time the audit began, AWSS did not have a full years worth of data on which to base decisions about survey effectiveness. However, AWSS is revising the survey and other data collection methods.

CORRECTIVE ACTIONS:

We provide ADR training to EEO counselors and other EEO specialists. In fact, many EEO specialists/counselors completed basic mediation skills training so the IRS will have many trained mediators. In addition, we give EEO counselors yearly EEO counselor refresher training. We are developing reports based on our first full years use of ADR and lessons learned.

To facilitate and encourage use of conflict resolution techniques, AWSS has developed the Workplace Conflict Initiative (WCI) and implementation plan that serves as a vehicle for marketing early resolution of all work related conflicts. The WCI will provide

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

3

managers and employees with tools for working through issues before they become EEO complaints.

AWSS EEOD Field Services will enhance the amount of ADR specific training provided to EEO counselors. In addition, AWSS will continue enhancing reports to include ADR success stories and data.

AWSS EEOD Field Services will revise the pre-complaint customer satisfaction survey form to learn why employees elect not to use ADR. Completing and submitting a customer satisfaction survey is voluntary and thus far, we have not received a high response rate to surveys. To ensure EEOD Field Services is capturing additional customer feedback, we have instructed EEO counselors to document customer's reasons for declining ADR. Counselors report this information in the ADR Analysis Report.

IMPLEMENTATION DATE(s):

December 2003 and October 2004

RESPONSIBLE OFFICIAL:

Director, EEOD Field Services, AWSS

CORRECTIVE ACTION(S) MONITORING PLAN:

AWSS will conduct post training evaluations to ensure ADR training for counselors meets course objective of providing ADR information that counselors could use to market the program and answer customer questions.

Level I Evaluation: To be completed by each student at the conclusion of the training

Level II Evaluation: To be completed three months after training

Level III Evaluation: To be completed 12 months after training

AWSS will review and report on customer survey results to determine why customers are not using ADR. The goal is to achieve the Treasury Department's goal of increasing by 25% the number of pre-complaint ADR sessions held.

IDENTITY OF RECOMMENDATIONS/FINDINGS:

The Chief, EEO and Diversity, should:

1. Draft a memorandum and voice mail that set forth the Commissioner's support for ADR, for distribution by the Commissioner.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

4

ASSESSMENT OF CAUSE:

Agencies have struggled with several issues since the implementation of ADR: marketing, voluntariness, management and employee training. IRS struggles with the same issues. Our program is relatively new and we are making incremental improvements. We are working on a marketing strategy with the goal of increasing program participation.

CORRECTIVE ACTION:

We agree with the recommendation. A memorandum and voice mail from the Commissioner or Deputy Commissioner supporting the use of ADR may help to increase the number of aggrieved employees and their managers who elect to participate in ADR. The Chief, EEOD will draft a memorandum and voice mail that set forth the Commissioner's support for ADR, and distribute it to all IRS employees and managers.

IMPLEMENTATION DATE:

October 2003

RESPONSIBLE OFFICIAL:

Chief, EEOD

CORRECTIVE ACTION(S) MONITORING PLAN:

Not applicable

IDENTITY OF RECOMMENDATIONS/FINDINGS:

2. Assure that IRS policy is changed so that managers who decline to participate in the ADR Program are required to document their reasons for doing so and have such declinations approved by a higher-level manager.

ASSESSMENT OF CAUSE:

The EEOC Management Directive 110 lists four ADR "core principles." One of the principles is "voluntariness" – "Parties must knowingly and voluntarily enter into an ADR proceeding. An ADR resolution can never be viewed as valid if it is involuntary.... Unless the parties have reached a resolution willingly and voluntarily, some dissatisfaction may survive after the ADR proceeding... Both parties should be reassured that no one can force a resolution on them, not agency management or EEO officials, and not the third party neutral." Based on this core principle, we do not require

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

5

managers to participate in ADR and have not required that they document the reasons for their declination.

In addition, our first quarter FY 2003 ADR data shows:

- ADR was requested by complainants in 31.2% of pre-complaints
- ADR participation rate for managers was 76%
- 41 mediations were conducted

We believe the management participation rate is very good, and we should concentrate our efforts on increasing the complainant's election rate for ADR.

CORRECTIVE ACTION:

We disagree with the recommendation and do not plan to require managers to document why they declined to participate in ADR. However, EEOC Field Services EEO counselors do collect and report the reasons managers voluntarily give for declining ADR. The manager's reasons and other ADR related data are included in the ADR Analysis Report.

IMPLEMENTATION DATE:

Not applicable.

RESPONSIBLE OFFICIAL:

Chief, EEOC

CORRECTIVE ACTION(S) MONITORING PLAN:

Not applicable.

IDENTITY OF RECOMMENDATIONS/FINDINGS:

3. Coordinate with the Director, Strategic Human Resources, and the Director, EEO and Diversity Field Services, to ensure that all managers receive training on ADR, including success stories and statistics describing benefits to the IRS.

ASSESSMENT OF CAUSE:

The IRS provides affected managers with information about ADR and a list of frequently asked ADR questions and answers on the Chief, EEOC web page. However, we clearly need to provide more information to address some of the concerns managers may have about participating in EEO mediation. EEOC Management Directive 110 states that managers "should" receive ADR training. Although we agree some training would be beneficial, we had not interpreted the use of the word "should" to mean that the IRS must provide this training to all managers.

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

6

CORRECTIVE ACTIONS:

We agree with the recommendation and are implementing it. We are working with Strategic Human Resources, Learning and Education, to revise the Management Aspects of EEO training for all managers to include a module on ADR that contains success stories and statistics describing benefits to the IRS. After completing the lesson, managers should be able to:

- Define ADR and describe the type of ADR that the IRS uses in its EEO Program.
- Define mediation.
- List the steps to a mediation session.
- List six reasons why managers should enter into Alternative Dispute Resolution with their employees. (This lesson will contain statistics and success stories.)

IMPLEMENTATION DATE:

March 2004

RESPONSIBLE OFFICIAL:

Chief, EEO

CORRECTIVE ACTION(S) MONITORING PLAN:

We will use the training certification process to track the number of managers who complete the course. We will use training survey results to measure the effectiveness of the ADR lesson. In addition, we will review ADR participation rates to see if the rate of management participation increases. Our objective is to achieve the Treasury Department's annual goal of increasing the number of ADR sessions by 25%.

IDENTITY OF RECOMMENDATIONS/FINDINGS:

4. Conduct a review that involves principal users, to determine whether the automated system is the most effective, economical, and well-coordinated solution to meet IRS EEO Program needs for the Headquarters EEO Office, AWSS EEO Office, and IRS business units, while minimizing ongoing costs.
5. Ensure that the IRS follows project management control principles consistently, if the IRS determines from its review that it should continue with implementing the automated system.

ASSESSMENT OF CAUSE:

In the Fall of 2000 the IRS awarded a contract to TechSolutions to purchase their EEO Analysis and Complaint Tracking System called Visual Powerfiles. The original contract

The Equal Employment Opportunity Alternative Dispute Resolution Program Could Be Improved

7

was awarded only after consulting with our end users. When we searched for a vendor, AWSS EEOD Field Services had not yet "stood up." Our decision to purchase was based on feedback from a user group we brought in to demonstrate the product and our contacts with the regional users of the previous system called EEO/MAS. Visual Powerfiles meets our needs for workforce analysis; however, AWSS has developed a web based complaint tracking system that addresses its requirements. We agree we must follow project management control principles for any future system procurement. We established a Visual Powerfiles User Group (UG). The UG reviews the system and recommends changes. The UG has representatives from embedded EEO offices, AWSS EEOD Field Services, and the Servicewide EEO Office.

CORRECTIVE ACTIONS:

We agree with the recommendations and have decided not to use Powerfiles as the complaint tracking system for the IRS. After purchasing Visual Powerfiles, we learned we lacked sufficient information about the procurement process, IT requirements, the vendor's ability to make system modifications, and AWSS Field Services' needs. Based on feedback from the UG and AWSS, we decided not to implement the Powerfiles complaints tracking module. However, the workforce analysis portion of Powerfiles provides our customers with much needed help. Because the complaints tracking portion did not meet the requirements of AWSS EEOD Field Services, they developed their own web based complaint tracking/reporting system.

IMPLEMENTATION DATE:

Completed

RESPONSIBLE OFFICIAL:

Chief, EEO
*Director, EEO Field Services

CORRECTIVE ACTIONS MONITORING PLAN:

The Chief, EEO decided to continue using the workforce portion of Visual Powerfiles. We are working with Procurement to adjust the pricing of our service contract for Visual Powerfiles to show the use of the workforce module only. *The Director, EEO Field Services will continue management and development of the AWSS web based complaint tracking/reporting system.

We will continue to convene the UG to measure the effectiveness of the workforce portion of Powerfiles.

If you have any questions, please call me or Alesia Pierre-Louis, Deputy Chief, EEO at (202) 622-5400.